

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 18673 of 2006

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Order:

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APTRANSCO.

The petitioner, who is a Junior Accounts Officer with the respondents-APTRANSCO, was placed under suspension pending enquiry on 29.11.1994. It is the case of the petitioner that since the date of his suspension, the pay of the employees was revised four times i.e in 1994, 1998, 2002 and 2006, and though the pay of the employees was revised four times, the respondents are paying him subsistence allowance, based on his pre-revised basic pay, as existed on the date of his suspension, which according to him, is illegal and arbitrary and violative of Article 21 of the Constitution of India. In support of his contention that the subsistence allowance has to be paid as per the revised pay scales, he placed reliance on the judgment of the apex Court in **Umesh Chandra Misra v. Union of India and Others**^[1].

The respondents filed detailed counter. Reiterating the counter-averments, the learned Standing Counsel for the respondents admitted that the pay of the employees was revised four times. While contending that except the revised scales of 1994, other pay revisions have no relevance to the case of the petitioner submitted that as per Regulation 4(ix) of the A.P. State Electricity Board Revised Pay Scales for Office Staff, O & M Staff, Construction Staff, Medical Staff, Teaching Staff, Fire Fighting Staff and Security Staff Regulations, 1994 (hereinafter referred to as 'the Regulations'), issued by the

respondents as Appendix-I to B.P. (P & G) Ms. No. 294, dated 01.11.1994, an employee, who is on leave or on deputation or under suspension on the date of issuance of the said regulations, who does not join duty before the expiry of the last date for exercise of option, may exercise his option within a period of one month from the date of resumption of duty, after expiry of his leave or on rejoining service after expiry of deputation or on reinstatement after revocation of his suspension, as the case may be. He submitted that inasmuch as the petitioner has been under suspension since 1994, and his suspension having not been revoked so far, and he having not exercised his option as required by Regulation 4(ix) of the Regulations, the question of the respondents paying him subsistence allowance based on the revised pay scales, does not arise. He, thus prayed that the writ petition be dismissed.

A reading of the writ affidavit and the counter-affidavit, would disclose that on account of certain acts of omissions and commissions of the petitioner and others, the respondents suffered loss to the tune of Rs.43.01 lakhs, and in that regard, apart from initiating departmental enquiry, a criminal case was also registered against the petitioner (accused No. 6) and others, and the petitioner is being tried for the offences of cheating and forgery by the Court of the IX Metropolitan Magistrate, Hyderabad. The respondents vide orders dated 29.11.1994, while initiating departmental enquiry, placed the petitioner under suspension, and ordered for payment of subsistence allowance. The enquiry officer, having conducted the disciplinary enquiry, submitted his report dated 22.01.1996 exonerating all the persons, except the petitioner. While so, it appears that the respondents vide orders dated 21.08.1996, cancelled the said report, and ordered *de novo* enquiry and appointed another enquiry officer. The petitioner

questioned the said order of the respondents by filing writ petition in W.P. No. 19949 of 1996, and a learned Judge of this Court, vide order dated 30.09.2005, while setting aside the order dated 21.08.1996, left it open to the respondents to continue the earlier enquiry proceedings. In pursuance of the order of this Court, instead of reinstating the petitioner into service, thought it fit to continue the enquiry proceedings and pay him the subsistence allowance.

From the facts, as narrated above, it would become clear that the petitioner has been under suspension since 29. 11.1994. As the petitioner was placed under suspension on 29.11.1994, the respondents are paying him subsistence allowance, based on the pay scales as existed on the date of his suspension. Admittedly, during the interregnum from 29.11.1994 and as on the date of filing of this writ petition, the pay scales of the employees of the respondents, were revised four times i.e. in December, 1994, 1998, 2002 and 2006. Though the petitioner contends that he is entitled to be paid subsistence allowance, based on the pay scales, as revised from time to time, the fact remains, the petitioner continued to be under suspension, and it is the case of the respondents that unless the petitioner exercises his option, as required by Regulation 4(ix) of the Regulations, he is entitled to subsistence allowance, based on the revised pay scales. To consider the question, whether the petitioner is entitled to subsistence allowance, based on the revised pay scales, it would be appropriate to refer to Regulation 4(ix) of the A.P. State Electricity Board Revised Pay Scales for Office Staff, O & M Staff, Construction Staff, Medical Staff, Teaching Staff, Fire Fighting Staff and Security Staff Regulations, 1994, issued by the respondents as Appendix-I to B.P. (P & G) Ms. No. 294, dated 01.11.1994, which reads:

An employee who is on leave or on deputation or under suspension on the date of issue of these regulations and who does not join duty before the expiry of the last date for the exercise of option under sub-regulation (ii) may exercise his option as aforesaid within a period of one month from the date of resumption of duty after the expiry of leave or from the date of his rejoining Board's service on the termination of his deputation or on reinstatement, as the case may be.

A bare reading of the above regulation, would make it clear that an employee, who is on leave or on deputation or under suspension as on the date of issuance of the regulations (01.11.1994), and who does not join duty before the expiry of the last date for exercise of option under sub-regulation (ii) (three months from the date of issuance), has to exercise his option within a period of one month from the date of his resumption to duty, after expiry of leave or on his rejoining Board's service on termination of his deputation or on his reinstatement after revocation of his suspension.

Admittedly, as on 01.11.1994, when the Regulations came to be issued, the petitioner was on duty. Though, the petitioner was on duty as on the date of issuance of the Regulations and till 29.11.2004, when he was placed under suspension, the fact remains, he did not exercise his option as required by sub-regulation (ii). The petitioner, admittedly, to this day continues to be under suspension, and though Regulation 4(ix) of the Regulations, enables an employee, who is on leave or deputation or suspension, to exercise option within one month from the date of his resumption to duty after leave, expiry of deputation and rejoining the service of the Board and reinstatement after revocation of the suspension, the fact remains, the petitioner did not get the opportunity to exercise his option, for the reason that he continues to be under suspension. Since the benefit of the revised pay scales is given only to those employees, who exercise their option as required by sub-regulations (ii) (in the case of serving employees) and (ix) (in the case of employees on leave or deputation or suspension),

the petitioner who has not yet exercised his option, as required by sub-regulation (ix) because of his continuance under suspension, is not entitled to the benefits of the revised pay scales. The petitioner who is not yet exercised his option, for payment of the revised pay scales, is neither entitled to subsistence allowance, based on the revised pay scales of 1994, nor can he claim to be entitled to subsistence allowance, based on the pay scales, as revised in 1996, 2002 and 2006.

The disciplinary proceedings initiated against the petitioner would have concluded long back, but for the pendency of the writ proceedings initiated by him before this Court in W.P. No. 19949 of 1996 assailing the proceedings of the respondents initiating *de novo* enquiry against the petitioner, they could not be completed. Be that as it may, it is submitted by the learned Standing Counsel for the respondents that pursuant to the orders dated 30.09.2005 of this Court in W.P. No. 19949 of 1996, the respondents almost completed the enquiry, and a final order would be passed in a month's time. If that be so, I deem it appropriate to dispose of the writ petition with the following directions:

The respondents shall pass final orders on the enquiry proceedings initiated against the petitioner expeditiously. If in the event, the petitioner is exonerated of the charges leveled against him, obviously his suspension would be revoked and he would be reinstated. Upon reinstatement, he is at liberty to exercise his option for extension of the benefit of the revised pay scales, as required by Regulation 4(ix) of the Regulations, and if the petitioner exercises his option, then the respondents would certainly process the same, and pay the benefits of the revised pay scales, to which the petitioner is entitled to.

Accordingly, the writ petition is disposed of. No costs.

N.V. RAMANA, J.

Dated: 26th October, 2006.
KSR

[\[1\]](#) 1993 Supp (2) SCC 210